BAR BULLETIN

PUBLISHED BY THE LOS ANGELES BAR ASSOCIATION

Judge Elliot Craig

Are Bar Conventions Successful?

Military Law Lectures

Lawyers in Defense of Democracy

Responsibility for Indigent Kindred

Andrew Jackson's Contempt

Members Dinner Meeting at University Club, March 27, 6:30 P. M. Novel program. See page 168, inside.

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BAR BULLETIN

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THE following endorsements were made by the lawyers and judges of Los Angeles County, voting in a plebiscite taken by the Los Angeles Bar Association on candidates for the Los Angeles Municipal Court:

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ELLIOT CRAIG

ELLIOT CRAIG departed this life at Los Angeles, California, on March 12, 1941, in his fifty-fifth year.

Born at Carrollton, Kentucky, on October 3, 1886, the son of Merritt Jesse and Sarah Alica (Hayden) Craig, he was brought to California by his parents at the age of five months. He received his general education in the public elementary and high schools of California and at the University of California and then attended the College of Law of the University of Southern California.

Admitted to the bar of California in 1911, Elliott Craig commenced a career in his chosen profession, which with the passing years gained for him the ever increasing respect and affection of his fellow lawyers and of his colleagues on the bench. In private practice for eleven years, he first took office as a judge of the Superior Court of the State of California in and for the County of Los Angeles on January 8, 1923, and, having been re-elected several times, he was a member of that court at the time of his death, after more than eighteen years of service.

In the conduct of his judicial duties he worked hard and unceasingly and with scant regard for his own personal welfare. He was an able, conscientious, and fair judge. He served in practically every department of the court and as its presiding judge. His last assignment was as judge presiding over the probate department, in which department he served since November, 1936.

On August 28, 1913, Elliot Craig married Florence Waller, who survives him. He also leaves a brother, Jesse Craig of Berkeley, and two sisters, Mrs. Victor Thompson of San Pedro, and Mrs. Humphrey Evans of Ottowa, Illinois.

In the passing of Elliot Craig the community has lost a distinguished citizen and faithful public servant, the legal profession one of its most able, respected, and beloved members, the court one of its best judges, and this association, of which he had been a loyal member since 1921, one of its most highly esteemeed members.

NOW, THEREFORE, BE IT RESOLVED, That the Board of Trustees of the Los Angeles Bar Association adopts these resolutions and the sentiments herein set forth in memory of Elliot Craig and as expression of our high regard and affection for him, our sorrow at his passing and our sympathy to his widow, his brother, and his sisters; and

BE IT FURTHER RESOLVED, That these resolutions be spread upon our minutes, published in THE BAR BULLETIN, presented to the Superior Court with the request that they be spread upon the minutes of said Court, and that a copy hereof be sent to the family of Elliot Craig.

ARE BAR CONVENTIONS SUCCESSFUL?

By Ewell D. Moore, of the Los Angeles Bar

THE conferences of state and local bar association executives of Arizona, California and Nevada, and members of the National Committees on Judicial administration, National Defense, and American Citizenship, held in Los Angeles February 20, developed some very interesting facts and features. The conference was called by the American Bar Association, and was conducted by Burt J. Thompson, Forest City, Iowa, chairman of Section Bar Organization Activities, of the A. B. A.

This observer got the definite impression that the annual national convention of the American Bar is not a success, due to the relatively small attendance of lawyers, and the small amount of interest manifested by the mass of bar members throughout the country in the proceedings, and to the poorly publicized results. Hence, it appears that the A. B. A. will hold regional conferences at various places, such as the one held here, in order to bring the A. B. A. program closer to large groups of lawyers, and to inspire state and local bar organizations to greater activities in their respective fields. This seems to be the sensible thing to do.

It may be well, in this connection, to consider our own State Bar conventions. If there is one disappointing thing about our State Bar and annual conventions it is the small number of lawyers who attend. About the same number—five or six hundred—appear at each convention from year to year, and these are almost always the same persons. The "rank and file," if we may use that ambiguous description, pay no attention to the convention. Many—very many—of the small bar organizations do not even send a delegate to the conference of State Bar delegates. Is it any wonder then that there is so much disinterest in and lack of understanding of State Bar programs and purposes—legislative and otherwise?

But to return to the A. B. A. conference: Although the attendance was disappointing, in view of the fact that several thousand members of the bar were within walking distance of the Biltmore Hotel, those who were sufficiently interested in the problems of their profession to give up a few hours, were amply rewarded. Everybody was invited, whether executives of the bar groups or not; that more did not come is another depressing evidence of the creeping paralysis affecting the bar as a whole when it comes to any consideration of its fading profession and its multiplying problems.

There were men from Nevada, Arizona and Oregon at the conference, few from distant California points, and a fair number from Los Angeles and near-by cities—men and women who *always* give freely of their time and effort for the good of the *entire* bar of the state, and never ask or expect rewards.

Chairman Thompson told of conferences at other places, and of the activities of the bar in other states; of the problems and responsibilities facing the bar—everywhere they are about the same—and of the efforts to meet and solve them; of the steps taken to improve the administration of justice, of unauthorized practice matters, and of efforts to coordinate bar activities on a wider and more effective scale.

"Lawyers In Defense of Democracy," was a subject on the program and in the absence of Charles H. Paul, member of the special A. B. A. committee for the Ninth Circuit, William C. Mathes, member of the Board of Trustees of the L. A. Bar Association, delivered an inspiring address. He proposed a task "of first importance for the organized bar as a public agency for national defense," and the "defense of our way of life to recall to the American people the fact that our individual liberty rests upon political equality." Part of Mr. Mathes' address

is published elsewhere in this issue of THE BULLETIN. It is commended to all our readers.

Harry J. McClean, of the Los Angeles Bar, member of the Section Council, spoke at some length on his work among the local bar groups of California, and particularly of the sectional conferences of bar associations in Southern California. He deplored the lack of aggressive leadership in many of the local associations, although he found energetic, enthusiastic individuals, principally among the younger members, who were anxious to undertake the task of urging unity of the bar for the furtherance of national and state programs.

The luncheon was addressed by Hon. John J. Parker, of Charlotte, N. C., Justice of the Circuit Court of Appeals, Fourth Judicial Circuit. There was a larger percentage of judges from the Federal and State courts present than of the hundreds of lawyers whose offices were within two or three blocks of the Biltmore Hotel. Those who came heard as fine a talk as has been delivered to lawyers in California in years. Again that deadly apathy among lawyers kept the attendance down to a mere hundred, when it should have been half a thousand—or more.

President Jacob M. Lashly, of the A. B. A., spoke at both the afternoon session of the conference and at the Los Angeles Bar Association's monthly dinner meeting, at the Biltmore. It is gratifying to record a good attendance at the dinner, some 300. It is so seldom that one hears a really fine speaker—nowadays, there is an inclination to deal in superlatives in commenting on President Lashly's talk. As one prominent member of the local bar, himself a great trial lawyer, aptly expressed it: "That fellow must be a wonder with a jury." Yes, President Lashly had everything that goes to make an interesting speaker—wit, humor, apt stories and eloquence. It will be a long time before we hear another speaker who equals the St. Louis lawyer.

YOUNGER LAWYERS AID NATIONAL DEFENSE PROGRAM

YOUNGER LAWYERS of America through their national organization—the Junior Bar Conference of the American Bar Association—are making a signal contribution to national defense. The public information program of the Conference, with its staff of over 300 state and local directors scattered throughout practically every community in the country, has at its command the talents of trained and qualified speakers, who are available without charge except traveling expenses, for speeches before any public gathering or body.

At the last annual meeting of the Conference held in September at Philadelphia, those attending, representing an entire membership of 6,500 lawyers under 36 years of age, voted to broaden and extend the public information program in an attempt to inculcate a deeper understanding of the democratic way.

Operation of the program is principally concerned with informative discussions. Topics which have proved popular are: The History of Democracy, The History of the American Constitution, The National Defense Program, Totalitarian Governments, and others of similar ilk.

Organizations desiring speakers on subjects within the scope of this public information program should communicate with the offices of the American Bar Association, 1140 North Dearborn Street, Chicago, Illinois. Prompt reference will be made to the appropriate local man in charge.

MILITARY LAW LECTURES PRESENTED BY LOYOLA LAW SCHOOL

OF TIMELY interest is the military law course now being presented at the Loyola Law School, 1137 South Grand Avenue, Los Angeles, under the supervision of the Committee on Law Lectures of the Los Angeles Bar Association. The course, which commenced February 24, comprises two lectures a week for six weeks, scheduled for Monday and Wednesday evenings from 8:00 to 9:30 p. m. The lecturer is Col. William A. Graham, U. S. J. A., retired, who was in the United States Judge Advocate General's office from 1917 until 1939, during which time he headed several important divisions of that department. Col. Graham was engaged in civil practice before he entered the army in 1916.

The course covers the court martial manual and many other phases of military law, including the organization of the army, the duties of the Judge Advocate General's department, courts of inquiry, etc. Considerable attention is being devoted to the matter of bonds, claims and contracts, as well as to the legal limitation of federal aid in domestic problems.

The course is open to practicing attorneys and others interested. In view of the interest being manifested in the course and the good attendance at the lectures, it is expected that the course will be repeated after the conclusion of the first series of lectures.

Loyola University generously assumed full financial responsibility as well as tendering the use of the facilities of its School of Law for the course because of Col. Graham's background in military law. The course is under the personal supervision of Rev. Joseph J. Donovan, Regent, who has been most helpful and cooperative in the arrangements and whose assistance has contributed largely to the success of the service of lectures.

LAWYERS IN DEFENSE OF DEMOCRACY*

By William C. Mathes, of the Los Angeles Bar

UPON taking office last September, President Lashly named a special committee on National Defense to "cooperate with any and all governmental agencies in the matter of the participation by the American Bar Association, and by lawyers generally, in preparation for national defense."

The chairman of the committee is able, untiring Edmund Ruffin Beckwith of New York City, who represents the Second Circuit. Charles H. Paul of Seattle was worthily chosen to represent our Ninth Circuit. It was not possible for him to be with us today, and for that reason I speak to you on behalf of the committee.

Soon after the Selective Training and Service Act of 1940 became law, the Committee on National Defense established offices in Washington, where, at the request of President Lashly, the War and Navy Departments, the Department of Justice, and the Advisory Defense Commission designated representatives to cooperate with the committee in its work. Thus, the American Bar Association assumed its proper place as a highly important cog in the machinery of national defense. And I venture that every bar association secretary in Arizona, California, Nevada, and elsewhere in the United States for that matter, has since felt on more than one occasion the compelling drive of Chairman Beckwith's determination to get the work under way.

All over the Nation, this committee has been the inspiration, the driving force that has aroused state and local bar associations to the lawyers' part in this huge national effort. Not the least of the committee's accomplishments has been the compilation of a "Manual of Law," dealing with the Selective Service Act, the Soldiers and Sailors Civil Relief Act, and kindred legislation. This manual has been officially accepted as a patriotic contribution from the American Bar Association, and is now being distributed for use by Selective Service officials throughout the country.

In the current February issue of the *American Bar Association Journal,* Chairman Beckwith reviews the scope of the Committee's activities to date and poses some challenging questions for the future. There he points to the fact that national defense effort necessarily means organized endeavor; and he expresses the hope that those lawyers who do not as yet belong to any organized group of the Bar will join with our local, state and national associations to the end that we may proudly say we are equipped and ready to see that no person now in the service, or hereafter entering the armed forces of this nation, nor their dependents, shall suffer denial of any legal right or deprivation of any just remedy for want of representation by a member of our profession.

The article concludes with the thought-provoking suggestion that the organized bar should at last explore and exercise its proper function as a public agency.

In keeping with that suggestion, I should like here to propose a task of first importance for the organized bar as a public agency for national defense. The distinguished Judge (Hon. John J. Parker) who will address you at luncheon today has said: "If democracy is to live, democracy must be made

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*This address was delivered by Wm. C. Mathes at the A. B. A. Conference of Bar Executives at the Biltmore Hotel, February 20, 1941.

efficient; for the survival of the fit is as much a law of political economy as it is of the life of the jungle. If we would preserve free government in America, we must make free government, good government. Nowhere does government touch the life of the people more intimately than in the administration of justice; and nowhere is it more important that the governing process be shot through with efficiency and with common sense."

The sentiment so eloquently expressed by Judge Parker should echo again and again throughout the ranks of the American Bar. Unquestionably, the continued neglect of our plain duty to improve the administration of justice will cause the public in time to relegate us into the limbo of forgotten professions.

But what I now propose is still another task. It is, I think, peculiarly a task for the organized bar. Many people, I fear, in this land of ours do not believe in democracy. Now I refer to good people—loyal American citizens. There are successful business men, financiers—even lawyers—who are inclined to admire the way in which dictators get things done. They wonder if the totalitarian system is not really the new model government, specially designed for our modern machine age. At the other end of the economic ladder stand the masses of men who think they fancy the apparent economic security provided by the totalitarian system.

On the one extreme, then, we have some employed groups who—mistaking individual political liberty for unbridled economic license—are willing to trade their forgotten political liberties for a strong man who will put the old machine in working order.

While on the other extreme, we have certain employee groups who, driven by economic dependence, may be willing to sacrifice their political independence —to trade their liberties for the "man on a horse" who promises economic equality.

With the American people, political equality—individual liberty—has been a matter taken for granted for so long that we have wholly forgotten its content. There is abundant evidence that many leaders of the American working man have come to believe that *political* equality is intended to include *economic* equality. The Russian peasants of course made that precise mistake. They exchanged their newly gained political equality for a promise of economic equality. The result was ruthless dictatorship.

In varying details substantially the same thing has happened in Italy and in Germany. For regardless whether the label be Communist, Nazi or Fascist, the totalitarian state spells dictatorship. The only real difference in the three is to be found in the costume of the dictator—a pair of overalls, an army uniform, or a dress suit.

I believe it to be the organized bar's most immediate task in defense of our way of life to recall to the American people the fact that our individual liberty —our most-to-be-prized of all possessions—rests upon political equality. I do not mean that we should go forth to wage one of those flag-waving campaigns of synthetic patriotism designed only to sway the emotions of our people. Recognition of the virtues of our democratic way of life should not be cheapened by dependence upon visceral sensations aroused only by the "Star Spangled Banner" or "The Stars and Stripes Forever." Rather, our efforts should be to demonstrate to the American people the true content of the individual liberty that flows from their political equality, and to show them why our democratic system is to be treasured not as a matter of mood, but as a first consideration of self-interest.

True, it may be difficult to arouse any real appreciation for that priceless but never-valued-until-suppressed right to criticise government, and those who man its agencies. English-speaking men have long taken for granted that right. But we lawyers *can* make articulate the abysmal difference between our government of *laws* and the totalitarian government of *men.*

We can point out that the totalitarian system treats the individual as but a means to an end. While it is of the very essence of our democratic way that the dignity of the individual be respected—that man be deemed an end within himself.

We can retrace for the American people of today the ordeal of the common man through centuries in his battle to achieve that democratic ideal. We can go back nineteen hundred years to the time when Christ pointedly argued the dignity of the individual by asking "How much then is a man better than a sheep?" (Matthew, 12:12.)

We can review the struggle that preceded the signing of Magna Charta in 1215. We can show how there arose certain legal principles which became the foundation of the common law of England, and subsequently of America.

We can review the struggle of those conscientious English judges who insisted on their right to measure the lawfulness of the conduct of men by principles which they called the common law. We can make relive that memorable Sunday morning of more than three centuries ago—November 10, 1612—when

the judges of England were summoned before King James I. That story—always a mental and spiritual feast for those trained in the common law—is best told by Dean Pound in "The Spirit of The Common Law" (at pp. 60-61).

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We can turn back public thinking to those early days in America when intelligent public debate stimulated widespread discussion of the rights of man. To the time when Thomas Paine, in his unforgettable pamphlet "Common Sense" wrote (p. 33):

> ". . . where, say some, is the king of America? I'll tell you, friend, he reigns above. . . . Yet that we may not appear to be defective in earthly honors, let a day be solemnly set apart for proclaiming the charter; let it be brought forth placed on the divine law, the word of God; let a crown be placed thereon, by which the world may know, . . . that in America *the law is king.* For as in absolute governments the king is law, so in free countries the law ought to be king; and there ought to be no other."

History abounds with such landmarks in the struggle for our freedom. And all along the trail we find the common-law lawyer at the forefront battling for the liberty of the individual under law—for the maintenance of legal standards whereby to measure *objectively* human conduct.

What, then, could be more timely than for the lawyers to explain to our people the historical background for our lofty goal of "Equal Justice under Law." To show them that the present tendency to favor purely personal governments of men whose conduct is not subject to any legal standard—far from being a new

and novel idea—is in stark reality an attempt to throw the individual freedom of English-speaking peoples for a loss of eight centuries.

But we lawyers of today won't succeed in gaining a full public hearing for the cause we espouse until we cease being so much the tools of our clients. If we are to remain an honored profession, to continue our traditional standing in society, we must heed well the admonition given to the Vermont Bar Association last October by Judge Augustus N. Hand of the Second Circuit. It was his warning that the lawyer's "greatest danger is in doing things for his client that he would never think of doing for himself, and in becoming the employer's minion rather than his guide." At the same time, Judge Hand declared that "our guild still contains the most high-minded members of the community. Where it fails," he said, "is in not sufficiently recruiting public life from its ranks, and in becoming too frequently involved in the enterprises of these clients."

If ever we had faith in the democratic form of government, there is today every reason to have far greater faith. Not because the dictators of middle European or Asiatic countries—where sheep are still considered of greater value than men—now speak lightly of our efficiency; but because the necessary machinery for successful functioning of the democratic process is today improved far beyond anything even dreamed of in 1776.

. . . . . .

As for myself, I believe that the democratic form of government in these United States has today a thousand-fold better chance to survive and function as the founding fathers intended, than at any other time in our history. I have the highest faith in the composite judgment of the American people. Given the facts, they will give an intelligent answer—the sound answer—the "right" answer.

. . . . . .

I believe that once inspired by the leadership of our profession, the American people will come to understand and appreciate the meaning of "Justice under law," and the worth-dying-for difference between a government according to legal standards and a government according to the whim and caprice of a dictator in power. That the American people will come to see clearly: that their individual liberties are inseparably tied up with a government of law; that political equality can never include equality of economic status, but can and should include equality of economic opportunity; that economic justice can and must be achieved without destroying the political equality so essential to the democratic way of life.

ANNUAL REPORT OF BULLETIN COMMITTEE

BOARD OF TRUSTEES
LOS ANGELES BAR ASSOCIATION

Gentlemen:

The Association's monthly publication, the BAR BULLETIN, was compiled, printed and distributed to the members and copies mailed to the principal Bar publications and law libraries throughout the United States during the year 1940, at a total net cost to the Association of $303.51, or an average cost of $25.26 per month. In other words, the cost of production and distribution over the income was $25.26 a month.

The average gross production cost was $163.21 per month, and the average monthly revenue from advertising was $137.91. The advertising account is handled by the publishers, Parker and Baird Company, which makes collections from the advertisers and keeps the accounts. The advertising revenue is applied against the cost of production and the Association is billed for the deficiency, which, as shown above, amounts to an average of $25.26 a month.

Efforts to obtain additional advertising have been unsuccessful, and it is unlikely that we shall be able to cover the entire cost of the BAR BULLETIN from advertising revenue. Our advertisers are presently limited to one title company, three banks, one office building, one lawbook publisher, one florist and one daily legal journal. Occasionally this list is added to but to no appreciable extent.

The Committee has been given valuable assistance by the Junior Barristers' Bulletin Committee throughout the year. As a result of this assistance more of the young bar members have become interested in writing for THE BULLETIN. Many of their articles have been of a high quality and should commend themselves to all members, old and young. It is an encouraging indication that the younger members of the Bar are assuming leadership in organized bar work to a greater extent from year to year. This is fortunate because it becomes increasingly difficult to interest the older members, with few exceptions, to undertake the task of writing for their professional publication.

It will be remembered that during 1939 THE BULLETIN conducted a contest, among the Junior Barristers, for the best legal article, the results of which have heretofore been announced. The results were made known and the prizes awarded in January, 1940. The total amount of the prize money was $225.00. This money was paid out of the general fund of the Association, and is not charged in the cost of operating THE BULLETIN for the past year.

It is mere repetition to say that it is no easy task for your Committee to produce each month a publication that will commend itself to all members —or even one that will be read by most of them. We know it is not always what it should be as to contents. Nevertheless, it does contain much that should interest most members, if only to learn what the Association is doing. It is heartening to know that THE BULLETIN seems to be highly regarded by other Bar publications, as evidenced by the frequent reprints of articles written by local members of the Bar for THE BULLETIN.

The work of THE BULLETIN Committee is continuous; it is never finished. Meetings are held at least once a month—sometimes twice, or more. THE BULLETIN *must* go to press on the 20th day of each month, and acceptable copy must be ready on the publication date. Again we urge all members, as we have done periodically for the past ten or fifteen years, to give your committee active assistance; give it the right kind of copy on subjects controversial or otherwise. It is unfair to a small committee of less than a dozen members to expect it to provide all the material, every month, in order to turn out a publication that will reflect credit on the Association.

Again we express a hope that more of the members will give heed to the Macedonian cry for literary help.

EWELL D. MOORE, *Chairman*
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RESPONSIBILITY FOR INDIGENT KINDRED—SUGGESTED STATUTORY CHANGES

By Edward Rubin and Benjamin Chapman, of Los Angeles Bar

IN 1933 the California legislature materially revised the procedure for placing responsibility on spouses, parents and adult children for county aid given their less wealthy kindred.[1] These provisions were later codified during 1937 in Sections 2500 through 2615 of the Welfare and Institutions Code. Earlier, in 1935, their scope had been widened to permit actions against executors and administrators of kindred liable to support those given such aid, in all cases in which the actions might have been maintained against the kindred.[2]

While relatively few contest the inherent justness of placing this liability on more able relatives, lack of legislative foresight and strict judicial construction of these statutory provisions have combined to immunize such relatives from responsibility in altogether too many instances.

Giving relief seems to be the current and established *modus operandi* of governmental units; the problem of financing such relief is its necessary concomitant. It therefore becomes extremely important to consider the present statutory provisions burdening relatives with liability for relief, and to suggest any changes which may be found necessary.[2a]

I. The Present Statutory Provisions Relating to Vicarious Responsibility for Aid Given Indigent Relatives

Considered apart from judicial construction of its provisions, the Welfare and Institutions Code (Sections 2576 through 2579) is hardly a model of legislative drafting. In fact these provisions almost defy any attempt to determine when the county should render aid, and how the county should proceed to place the burden of such aid on responsible relatives.

When these provisions are considered in the light of recent judicial pronouncements, the statutory scheme for recovery by the county against responsible relatives becomes clearer, but highly ineffective.

Thus, in the recent case of *County of Los Angeles v. Gold*[3] the Appellate Department of the Superior Court for the County of Los Angeles held that the county could not recover against a father for medical aid rendered by the Los Angeles General Hospital to his son unless (1) the complaint alleged that the father was financially able to render support at the time the aid was given but failed to do so, and (2) a court proceeding to fix liability on the father was determined before the support was rendered.

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[1]Stats. 1933, Ch. 761, pp. 2006-7. Statutory provisions authorizing the Board of Supervisors to provide for aid to the indigent were present as early as 1855. See Stats. 1855, Ch. LVII, p. 67; Stats. 1891, Ch. CCXVI, p. 295; Stats. 1897, Ch. CCLXXVII, p. 452. Statutes providing for reimbursement by relatives for such aid, however, did not appear until 1901. Stats. 1901, Ch. CCX, p. 636.

[2]Probate Code, Sec. 573. Any doubt as to whether the personal representative could be sued is removed by this statute. See cases collected in note 96 A. L. R. 534 (1935). Section 573 has been held inapplicable, however, in cases where the kindred died prior to its enactment. County of *Los Angeles v. Pidwell* (Civ. A. 3882, April 22, 1938). Its value has been further diminished by the recent decision (to be discussed subsequently) of *County of Los Angeles v. Gold* (Sup. Ct. App. Dept. No. Civ. A 4734, L. A. Daily Journal, Dec. 11, 1940).

[2a]The importance of the problem is emphasized by recent legislative proposals to curtail State relief work and place entire control of relief administration in counties. Los Angeles Evening Herald and Express, January 11, 1941, p. A-16.

[3]Supra Note 2, Cf. *County of Los Angeles v. Bank of America* (Sup. Ct. App. Dept. No. Civ. A 4661, L. A. Daily Journal, Dec. 11, 1940).

It may be that other courts will limit the decision so as to permit the county to seek reimbursement even after the aid is extended, provided that in its complaint there is an allegation that at the time the services are rendered the relative against whom recovery is sought was financially able to support the indigent in whole or in part.

But even if judicial grace does not so favor the county, the decision cannot be condemned. It does no violence to the present statutory provisions; rather it is one of the several "logical," albeit different results which could be obtained from these ambiguous and incomplete provisions.

To the extent that the *Gold* case holds that the complaint must allege ability by the relative to support the indigent, it simply applies well-settled rules of pleading. Where a party relies for recovery upon a purely statutory liability the complaint must plead every fact which is essential to the cause of action under the statute, and must also negative limitations on liability contained in the clause creating and defining the liability.[4]

The Welfare Code (Sec. 2576) provides in part that spouse, parent and adult child shall reimburse the county for support of the indigent "to the extent of their ability." Further it directs the court to order each defendant in a proceeding to ascertain and enforce responsibility, to repay to the county a proper proportion, if any, of his liability, unless the court finds "that a defendant is unable to pay any sum for support, either because of lack of sufficient funds or because such payment would result in the probability of the defendant becoming at some future time a public charge."[5] Finally, liability for support of the indigent is placed first on the spouse, then on the parent, and lastly on the adult child.[6]

Under the present statute, it is thus no remote possibility that future decisions will require the county to plead and prove in its petition at least the following: (a) that the relative is able to pay for support; (b) that such payment will probably not make him a public charge; and (c) there are no relatives whose liability is made prior by Sections 2576 and 2578, with sufficient financial ability to support the indigent.[7]

To the extent that the *Gold* case requires the complaint to allege ability on the part of the relative to support the indigent as of the date the aid was extended, and requires the court proceeding to be determined prior to the rendition of aid, the decision rests on more doubtful grounds.[8]

In the first place, there is nothing in the Code which expressly requires that reimbursement may be sought only against a relative who is financially able to pay as of the date the services are rendered.

In the second place, the statutory provisions readily lend themselves to an interpretation which would permit the aid to be rendered prior to obtaining any court order directing relatives to reimburse the county. Thus it is possible to argue that under the present statutory scheme, two types of aid may be given—emergency and non-emergency. As for non-emergency aid, before it can be given the county must determine (1) that there is neither spouse, parent, nor adult

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[4]*Green v. Grimes Stassforth Stationery Co.*, 101 Cal. App. Dec. 533, 102 Pac. (2d) 452 (1940).

[5]Wel. and Inst. Code, Sec. 2578.

[6]Wel. and Inst. Code, Secs. 2576, 2578.

[7]*County of Los Angeles v. Bank of America, supra*, Note 3.

[8]Cf. the earlier case of *County of Los Angeles v. Frisbie* (Sup. Ct. 450684, April 22, 1940).

child within the state who is financially able to support the indigent; (2) that if any one or more of the foregoing are financially able to support the indigent, they have failed to do so. This determination may be made without benefit of court proceeding. Once made, county aid may be given. Once the aid is given or while it is being given the county may seek reimbursement against the named relatives by a court proceeding instituted by the district attorney at the request of the board of supervisors of the county.[9] As for emergency aid, it may be given before the county has determined whether there are any relatives capable of supporting the indigent. The only restriction on such aid is that it be given "*pending* a determination of responsibility" for the indigent's support.[10] The statute does not expressly require, however, that this emergency aid be given pending judicial determination of liability; it may simply mean pending such determination by the proper administrative officials in the county.

But there are several provisions in the Code which militate against the views expressed above, and which lend support to the conclusions reached by the court in the *Gold* case.

Thus in Section 2578 of the Code it is provided that the order of the court directing reimbursement by relatives "shall specify that a given sum shall be payable monthly in *advance* to the board of supervisors . . . for the entire or partial maintenance of the defendant's indigent relative in accordance with the defendant's financial ability." The implication which may be drawn from this section is that the order for reimbursement must precede the rendition of the aid.

Again Section 2576 in effect provides that only emergency aid may be extended *pending* a determination of the relative's responsibility for the support of the indigent. The implication which may be drawn from this provision, when read in light of the other relevant statutory provisions, is that non-emergency aid may be rendered only after judicial determination of the relatives' responsibility for support; otherwise the county acts at its peril as far as recourse against relatives is concerned. In fact it is even arguable that under the present code provisions the county may obtain reimbursement from relatives for emergency aid given only if the aid is given after the county has performed the almost impossible task of instituting a *judicial* proceeding for the determination of responsibility.

The net result of these provisions for reimbursement, especially when read in light of the Gold case and other decisions,[11] is that the statutory scheme becomes unworkable, unnecessarily expensive and not nearly as inclusive as it might be. These weaknesses may be summarized briefly as follows:

1. The duty to support indigents is limited to spouse, parent and adult child living within the state.[12] Non-resident relatives are apparently immune even if they enter the state after the services are rendered. If they have property within the state, it is probably not subject to attachment.

2. The county's failure to institute a judicial proceeding at the time when

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[9]Wel. and Inst. Code, Sec. 2577. In Los Angeles County reimbursement proceedings are instituted by the County Counsel's office. See L. A. County Charter, Sec. 21; Pol. Code, Sec. 4153(8).

[10]Wel. and Inst. Code, Sec. 2576.

[11]*County of Los Angeles v. Dozier* (Sup. Ct. App. Dept. No. Civ. A 4021); *County of Los Angeles v. Merritt* (Sup. Ct. App. Dept. No. Civ. A 4097); *County of Los Angeles v. Pidwell, supra,* Note 2; *County of Los Angeles v. Bank of America, supra* Note 3.

[12]Apparently the parent need pay only the difference between the amount necessary to reimburse the county and the amount which the spouse can afford to pay. The adult child need pay only the difference between the cost of the aid and the amount which spouse and parent can afford to pay. Wel. and Inst. Code, Secs. 2576, 2578.

the primary concern should be relief of suffering may very well exempt both the relative and his personal representative from subsequent suit.

3. Relatives who acquire sufficient funds to make payments after the aid is rendered, seemingly escape liability. Nor does the Welfare and Institutions Code consider the responsibility of a relative where the recipient of aid is able to make no more than partial payment.

II. Proposed Statutory Changes

What has been written before indicates that at present for the county to be reimbursed by relatives for aid given indigents, it must proceed under an ambiguous statute, which by strict judicial construction has lost much of whatever efficacy it may once have had, and which is premised on a theory not conducive to the maximum revenue. This theory seems to be as follows: If at the time aid is rendered the indigent has relatives of the designated classes who can support him, no reimbursable aid can be rendered unless the county by court proceeding determines that such kindred have failed to support the indigent and fixes their liability.

A host of changes may be suggested. Some would merely seek clarification of existing statutory provisions. Some would attempt escape from judicial limitations placed on reimbursement actions. Others would essay drastic revision of the relevant code sections and their underlying theory.

A. *"Drastic" Changes*

The previous discussion of present statutory weaknesses has hinted at amendments which would change the theory underlying the provisions as to reimbursement by relatives to the county.

Aid, whether or not emergency, could be rendered upon an administrative determination that the indigent could not afford to pay for such aid, and that relatives, previously notified that county aid was contemplated, had refused to provide for such aid. Thereafter, and within a fixed period after the aid was rendered, the county could proceed to impose liability on designated relatives.[13] If desirable, responsibility for support could be extended to brothers, sisters, grandparents, and adult grandchildren.[14]

Nor should liability be limited only to relatives within the state at the time aid is rendered. For example, from a revenue standpoint there is no reason to burden an adult child living in California, and immunize one living in Arizona, entering California for a short time, then returning to Arizona. From a legal standpoint, such legislation directed at relatives residing out of the state might be subject to attack on the grounds of unconstitutionality. If sustained, however, it is more than likely that judgments properly obtained in California could be enforced elsewhere under the sanction of the "full-faith and credit" clause of the

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[13]At present under the broad holding of the *Gold* case no problem should arise as to the period within which court proceedings must be instituted to determine the liability of relatives, for the county must do so no later than the rendition of aid. In the event of failure by defendant to make a monthly payment as ordered by the court (Wel. and Inst. Code, Sec. 2578), it is not clear which statute of limitations would govern the enforcement of the order. *Cf.* C. C. P. Secs. 336, 338, 339, 343; *cf.* also C. C. P. Sec. 345 (four year statute applicable to recovery for support given by *state* hospitals).

[14]Originally the duty to reimburse extended to spouse, adult children, parents, brothers and sisters, grandchildren and grandparents. Stats. 1901, ch. CCX, p. 636. *Cf.* New York Public Welfare Law, Sec. 125.

federal constitution.[15] If held invalid, the remainder of the statute could be saved by a properly drawn severability clause.

Finally, the liability of indigent, each relative, and their respective estates should be several. It should depend only on the rendition of aid after an administrative determination in good faith that at the time the aid was given the indigent could pay nothing or did pay all that he could afford but less than the reasonable value of the services. It need not depend on the relative's ability to support the indigent at the time aid was given. As among the various responsible relatives and the indigent, provision could be made for contribution. In this connection it would be advisable to have specific provisions as to the time within which such contribution could be sought.[16] The court with respect to any given defendant could be given the power to adjudge the manner and amount of payment according to such defendant's ability to pay, and to modify such judgment on a showing of proper cause by defendant or county or any other person subject to liability.[17]

B. *Clarification*

Failure to effect complete revision of the reimbursement provisions should not prevent necessary clarification. Thus the procedure to be taken for reimbursement where emergency aid is given, is not clear. The code should be amended to state expressly whether or not a judicial proceding to fix the relative's liability for support must be pending at the time emergency aid is given. Likewise it is not clear whether a relative or his estate is liable for support where the indigent is able to pay or the county accepts from the indigent a portion of the value of the services. Nor is it certain whether and against whom the county may proceed where one "primarily" liable, e. g., a spouse has the means to support the indigent, is ordered by the court to make payments to the county, and then becomes impoverished.[18] Finally, as a matter of caution, the provisions of the code incorporating by broad reference, Title I to IX of Part II of the Code of Civil Procedure should be amended to incorporate only such provisions as are not inconsistent with the relevant sections of the Welfare and Institutions Code.[19]

Conclusion

For governmental units to give and finance relief in a business-like manner, there must be a combination of a simple, clear, revenue producing statutory scheme, and administrative officials humane enough to prevent harsh results in the particular case but stern enough to obtain all sums which can be collected properly. Enough has been said thus far to indicate that as far as the statutory scheme is concerned, thorough consideration, if not change, is necessary.

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[15]U. S. Const., Art. IV, Sec. 1; *Milwaukee County v. M. E. White Co.*, 296 U. S. 268, 56 Sup. Ct. 229 (1935).

[16]Otherwise the question would arise as to whether the liability for contribution was statutory and governed by the three-year statute of limitations (C. C. P. Sec. 338) or quasi-contractual and governed by the two-year statute of limitations (C. C. P. Sec. 339; *cf. Lyon v. Tooker*, 168 Misc. 915, aff'd w.s. 256 App. Div. 905, 281 N. Y. 735), or governed by the four-year statute applicable to cases for which there is no statute of limitations (C. C. P. Sec. 343).

[17]The analogy, of course, is to judgments for alimony. See Civ. Code Secs. 137, 139; *Cf.* Wel. and Inst. Code, Sec. 2579.

[18]Wel. and Inst. Code, Sec. 2579.

[19]In this connection, it might be well to eliminate the interchangeable use of the words "proceedings" and "action." Wel. and Inst. Code. Secs. 2577, 2578.

ANDREW JACKSON'S CONTEMPT OF COURT*

By Thomas E. Ryan, of Beverly Hills Bar

IN 1815 a case arose which, while not important because of the principles of law settled therein, is interesting because it involved a future President of the United States, Andrew Jackson, and the United States Judge who granted a Writ of Habeas Corpus in the case found himself in jail within a very short time after granting the writ.

Andrew Jackson, the seventh President of the United States of America, was born in Waxhaw Settlement, South Carolina in the year 1767, and at the age of 13, was fighting in the American Revolution. In 1784 Jackson began the study of law and later was appointed solicitor for the western district of North Carolina, now the State of Tennessee. He was a member of the convention which modeled the Constitution and organized the State of Tennessee. He later became United States Senator, Judge of the Supreme Court, and Major General of the state militia.

In 1813, at the outbreak of hostilities with the Creek Indians, Jackson raised a volunteer force of some 3,000 men and defeated them. According to some authorities, his final victory over the Indians in 1814 broke the power of the Indian race in North America. It was as a result of his success against the Indians that Jackson was made a General in the United States Army and he defended New Orleans against the attack of the British in the year 1915.

In the year 1815 the case of Andrew Jackson began. For a short period of time after the defeat of the British at the battle of New Orleans the city was under martial law, with General Jackson in command. He ruled the city with an iron hand, and in order to escape his domination some of the French troops occupying the city and even some of the French civilian residents who had become naturalized, placed themselves under the protection of the French consul, M. Toussard. Jackson promptly countered with an order directing the consul and all other Frenchmen who were not citizens of the United States to leave New Orleans within three days and not return to within 120 miles of the city until news of the ratification of the treaty of peace with England was officially published.

A few days later, on March 3, 1915, the Louisiana "Courier" published a letter from a reader signing himself "A Citizen of Louisiana of French Origin," in which General Jackson was bitterly assailed for his mandate against the Frenchmen. When Jackson read the letter he sent for the editor and learned from him that the writer of the letter was a Mr. Louaillier, a member of the Louisiana Legislature.

On the following Sunday, March 5, Louaillier was walking along the levee near a well-known coffee house when he was arrested and taken to prison by order of General Jackson. A lawyer named Morel who witnessed the arrest made application to Judge Dominick A. Hall of the U. S. District Court for a writ of habeas corpus on behalf of Louaillier. The writ was granted and served upon Jackson, requiring him to produce the prisoner before Judge Hall on the following day. Instead of obeying the writ, the General seized it from the man who had served it and dispatched one of his own officers to arrest Judge Hall on the charge of inciting mutiny within the military encampment. Hall was promptly seized and lodged in the same prison with Louaillier. Jackson also caused the arrest of a prominent citizen of New Orleans named Hollander,

*This article was used on the L. A. Bar Association radio time, Station K.F.A.C. Its subject is of unusual interest.

who had been overheard to remark of Jackson's action with respect to the French, that it was a dirty trick.

The military court acquitted Louaillier, but Jackson did not like the decision and kept Louaillier in jail. Jackson contended that military law was supreme and in most cases was the will of the general.

About a week after the arrest of Judge Hall he was conducted under Jackson's orders to a point beyond the lines of the American encampment and set at liberty with the following message from the General: "I have thought proper to send you beyond the limits of my encampment, to prevent a repetition of the improper conduct with which you have been charged. You will remain without the lines of my sentinels until the ratification of peace is regularly announced, or until the British shall have left the southern coast."

On the following day, March 13, an official courier arrived from Washington to announce the ratification of the treaty of peace with Great Britain. Martial law was at once abrogated and General Jackson issued a proclamation of pardon for all military offences and the release of all prisoners held under such charges. Louaillier was accordingly freed and Judge Hall returned to his home. On March 22, on motion of U. S. District Attorney John Dick in Judge Hall's court, an order was issued directing Jackson to show cause why an attachment should not be awarded against him for contempt of the court in having disregarded the writ of habeas corpus and imprisoned the honorable judge of the court. Instead of appearing in court on the return day the General sent his counsel, Edward Livingston, who came prepared to read an elaborate defense of the General's conduct, based on the exigencies of martial law. The judge refused, however, to be influenced by the arguments advanced and ordered the attachment to be sued out, returnable on March 31.

The General appeared in court that day in civilian attire, with a numerous following of his friends and admirers. The proceedings were delayed for some time by the shouts and applause of the spectators. Jackson mounted a bench and addressed the crowd, exhorting them to be silent and to respect the dignity of the court. When silence had been restored the judge rose and announced that the court would be adjourned because it was not possible to proceed under such circumstances. Jackson remonstrated with him and assured him that "the same arm that protected from outrage this city against the invaders of the country, will shield and protect this court, or perish in the effort."

The court then proceeded to business, the District Attorney opened with a list of interrogatories directed to the General, bearing on the arrest of Louaillier and the events that followed. Jackson, however, refused to answer any of these questions, stating to the court that in the paper previously presented by his counsel he had set forth a complete defense of his conduct. As there was nothing he could add to that paper, he said, he was prepared to receive the sentence of the court. The court thereupon pronounced its judgment, that the defendant pay a fine of one thousand dollars to the United States.

When court adjourned the General was borne away by a crowd of his admirers. Outside they commandeered a private carriage, dispossessed its occupant, unharnessed the horses, seated Jackson inside and conveyed him in triumph through the streets. Later at Exchange Coffee House Jackson stated: "I have, during the invasion, exerted every one of my faculties for the defence and preservation of the Constitution and the laws. On this day I have been called on to submit to their operation under circumstances which many persons might have thought sufficient to justify resistence. Considering obedience to

the laws even when we think them unjustly applied as the first duty of the citizen, I did not hesitate to comply with the sentence you have heard, and I entreat you to remember the example I have given you of respectful submission to the administration of justice."

Upon his return to his quarters Jackson immediately wrote out a check for a thousand dollars and sent it to the court. When his admirers raised the amount for him by popular subscription, he waived it aside with characteristic generosity, asking that the sum be used to relieve the families of those who fell in defence of the city.

The incident left Jackson's glory undiminished, except in pages of history, where it is a warning that a General must use martial law moderately, and an example to encourage a just judge to maintain the supremacy of the laws. Twenty-nine years later the full amount of this fine, with interest added, making a total of $2,700.00, was refunded to Jackson by act of Congress.

The question presented in this case aroused a controversy among the citizens of New Orleans. Jackson was a very popular man. Many of the populace were of the opinion that his actions in the arrest of Judge Hall and Louaillier were within his jurisdiction and authority, and that these two men should have been arrested. They adopted the viewpoint that a General, acting under martial law, can do as he wishes and not be subjected to the jurisdiction of the civil courts. An equal number of the civilian, and even some of the military men, took the opposite view and contended that martial law was not supreme and that the declaration of Judge Hall in this case was correct. They felt that a person who was not a member of the military forces of this country should not be subjected to military law, but should have his right of trial before a civil court.

When the facts and decision of this case reached Washington, the same two views were adopted. Certain authorities in Washington attempted to have Jackson court martialed for his actions, while other authorities in Washington attempted to have Judge Hall impeached. Needless to say, Judge Hall was not impeached nor was General Jackson court martialed. Whether or not the decision was correct, General Jackson obeyed the ruling of the court.

It might be interesting to mention that during the Civil War, the question of the authority of a General under martial law was again raised. During the war numerous civilians were arrested by the military authorities, one of whom was a prominent attorney from the State of Indiana named Milligan. He was a southern sympathizer and was arrested by General Hovey and sentenced by a military court to hang. Mr. Milligan argued that the military commission had no authority to hear his case as he was a civilian and not subject to military law. The Milligan case finally reached the Supreme Court of the United States, which pointed out in its decision that the State of Indiana was at no time during the Civil War within the area of actual warfare. "Martial law," the court said, "can never exist where the courts are open and in the proper and unobstructed exercise of their jurisdiction. It is also confined to the locality of actual war." It would seem from this later decision on the Milligan case that Andrew Jackson was correct in his view, as New Orleans was the scene of actual warfare and martial law existed at the time of his actions against Louaillier and Judge Hall. In any event, one year before his death, Andrew Jackson received the return of his $1,000.00 with interest.

ANNUAL REPORT OF LEGAL ETHICS COMMITTEE

March 19, 1941

The Board of Trustees
Los Angeles Bar Association

The undersigned, as Chairman of the Legal Ethics Committee of the Los Angeles Bar Association, has been authorized by that Committee to prepare and present for your consideration a brief summary report of the activities of that Committee.

In addition to numerous telephonic inquiries made by attorneys, which were satisfied by mere citation of one of the Canons of Ethics, the Committee rendered 16 written opinions, a copy of each of which is enclosed herewith. Each of these opinions has been indexed at the top thereof by the name of the attorney who propounded the question, the date, and a short index of the subject-matter.

The Committee believes that an overwhelmingly majority of attorneys desire to conduct themselves in a strictly ethical manner and that if they are fully informed of the existence of the Committee, they will present their questions of ethics to the Committee for answer and abide by the opinion rendered. It is the unanimous opinion of the Committee that more publicity should be given to the existence of the Committee and its functions so that more attorneys will avail themselves of the service.

It is also the opinion of the Committee that closer contact should be maintained between the Legal Ethics Committee of the Los Angeles Bar Association and the same committees of the New York City Bar Association and the San Francisco Bar Association, so that uniformity of opinion on the same subject-matter may result.

Mr. Edwin W. Taylor, a member of the Committee, has partially completed the classification and indexing of all opinions rendered by former Legal Ethics Committees of this Association. Your Chairman would suggest that Mr. Taylor be encouraged to complete this good work in order that succeeding committees may have available properly indexed former opinions. This will result in uniformity and be, in the opinion of your Chairman, of material assistance in the preparation of future opinions.

(Signed) WM. L. MURPHEY,
Chairman Legal Ethics Committee.

NOTE TO MEMBERS:

THE ATTENTION of the members of the bar is called to the fact that the Committee on Legal Ethics of the Los Angeles Bar Association meets regularly to consider and answer questions of professional ethics submitted to it. The services of this committee are not restricted to members of the Los Angeles Bar Association, but are available to all attorneys, whether or not they are members of the Association.

Any attorney who finds himself in a quandary over an ethics problem may obtain the written opinion of the committee if he will write a letter to the committee stating briefly the facts out of which the problem has arisen. All such letters should be addressed to the committee at 1124 Rowan Building and the questions should be in hypothetical form. The letters of inquiry are kept confidential.

DINNER MEETING

March 27, 1941 6:30 o'clock

UNIVERSITY CLUB

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You have been asking for it—here it is. In response to requests of members of the Association for programs dealing with legal subjects, we have secured from New York one of the law film classics, which we believe will prove to be both entertaining and instructive. This film has been very highly recommended to us by a number of attorneys in the eastern states who have had the privilege of seeing it.

JOSEPH HENRY BEALE

on

JURISDICTION FOR DIVORCE

Prof. Beale is one of the leading authorities of the United States on the subject of Conflict of Laws, with reference to Jurisdiction for Divorce. He was reporter for the Restatement of the Conflict of Laws.

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